

# State of Colorado



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
633 17<sup>th</sup> Street, Suite 1320  
Denver, Colorado 80202-3604  
Phone (303) 866-3300  
Fax (303) 866-5038

## Meeting Minutes February 21, 2006

The State Personnel Board met in public session on Tuesday, February 21, 2006, at the Colorado Department of Human Services, Colorado Mental Health Institute at Pueblo, 1600 West 24<sup>th</sup> Street, Conference Room A, Pueblo, Colorado 81003.

The meeting was called to order at approximately 9:00 a.m. Board Members Diedra Garcia, Don Mares, and John Zakhem were present in person. Board Member Elizabeth Salkind was present via teleconferencing. Board Member Troy Eid was absent.

Kristin F. Rozansky, Board Director, was present in person. Assistant Attorney General Pam Sanchez, Board Counsel, and Jane Sprague, General Professional III, were present via teleconferencing from the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 2, Denver, Colorado 80202-3604.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. February 1, 2006 Report on Residency Waivers**

Director Rozansky reported that there was one residency waiver request from the Colorado Department of Human Services for positions in the Nursing series, which was a continuation of a previous request. The Director granted the continuation of the request for one year.

### **II. PENDING MATTERS**

#### **A. Petition for Declaratory Order of Barry Rice v. Trustees of the State Colleges in Colorado, Auraria Higher Education, Auraria Media Center, State Personnel Board case number 2006D002.**

Director Rozansky was recused from participation in the discussion of this matter. Board Counsel directed the discussion, provided the history and current status of the case, and answered questions from Board members.

Having determined that the Board was barred from granting the petition for declaratory order because a petition for writ of certiorari was pending in the Colorado Supreme Court, Ms. Garcia moved to deny the petition for declaratory order. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- B. Randy Pfaff v. Department of Corrections, State Personnel Board case number 2004B112(C).

Following a discussion of Complainant's counsel's failure to confer with opposing counsel regarding his Motion to Vacate Judgment Pursuant to C.R.C.P. 60(b), constituting a violation of C.R.C.P. 11 and 121 §1-15(8), Ms. Salkind moved to grant Complainant's Withdrawal of Motion to Vacate Judgment Pursuant to C.R.C.P. 60(b). Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem. In a second motion, Mr. Zakhem moved to assess attorney fees and costs against Complainant's counsel and award fees and costs incurred by Respondent for its preparation of the response to the motion to vacate, pursuant to C.R.C.P. 11 and 121. In addition, the matter is to be remanded to the Administrative Law Judge for a hearing to determine the amount of Respondent's attorney fees and costs. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- C. Petition for Declaratory Order of the Colorado Federation of Public Employees (CFPE) v. Department of Personnel and Administration, State Personnel Board case number 2006D003.

Mr. Mares and Ms. Salkind were recused from participation in the discussion of this matter. Because there was no quorum for action in this matter, it was tabled until the March Board meeting.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. David Ruchman v. Department of Revenue, Enforcement Group, Hearings Division, State Personnel Board case number 2005B085.

Ms. Garcia moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, with the exception of Conclusion of Law 5 ("Attorney fees are not warranted"). Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the

following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem. In a second vote, Ms. Garcia moved to reverse Conclusion of Law 5 and to award attorney fees to Complainant. Mr. Mares seconded the motion. The motion failed, with Ms. Garcia and Mr. Mares voting in the affirmative and Ms. Salkind and Mr. Zakhem voting in opposition to the motion. In a third vote, Ms. Salkind moved to adopt Conclusion of Law 5. Mr. Zakhem seconded the motion. The motion failed, with Ms. Salkind and Mr. Zakhem voting in the affirmative and Ms. Garcia and Mr. Mares voting in opposition to the motion. It was decided that a Special Board Meeting would be held prior to the statutory deadline of March 15 for a Board decision, with Board members participating either in person or by telephone, in order to determine the outcome of Conclusion of Law 5.

- B. Shelley Burke v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2004B069.

Mr. Mares moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

#### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

Director Rozansky was recused from participation in the discussion of the next two matters. Board Counsel directed the discussions and answered questions for these two cases.

- A. Helen Bruckbauer v. Department of Transportation, State Personnel Board case number 2004G056(C).

Board Counsel noted that under Board Rule 8-51B, the Pleading to the Director/Personnel Board for Reconsideration of the ALJ's Preliminary Recommendation of "Hearing Denied" Received February 13, 2006, may not be considered. Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- B. Ida Archuleta v. Department of Human Services, Colorado State Veterans Center, State Personnel Board case number 2005B048.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- C. Julie Torvik v. Department of Public Health and Environment, Laboratory Services Division, State Personnel Board case number 2005G040.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- D. Toni R. Lucci-Wolgamott v. Department of Natural Resources, Board of Land Commissioners, State Personnel Board case number 2005G044.

Board Counsel noted that under Board Rule 8-51B, Respondent's Request for Materials to be Included in State Personnel Board Packet may not be considered. Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, and Ms. Salkind. Mr. Zakhem voted in opposition to the motion.

- E. Annette Collier v. Department of Human Services, Colorado State Veterans Home, State Personnel Board case number 2004B156.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- F. Chantal Smith v. Department of Human Services, Division of Child Welfare, State Personnel Board case number 2005G107.

Board Counsel noted that under Board Rule 8-51B, the Motion to Reconsider the Preliminary Recommendation of the Administrative Law Judge may not be considered and was, therefore, denied. Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- G. Anthony Tweneboah-Koduah v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2005G068.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- H. Ron Harthan v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2006G034.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- I. Erin M. Hutchinson v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2006G036.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- J. Nanci Bravo v. Department of Human Services, Colorado State Mental Health Institute at Pueblo, State Personnel Board case number 2006G039.

Ms. Salkind moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

- K. Kevin W. Cook v. Regents of the University of Colorado, University of Colorado at Boulder, Housing Facilities Services, State Personnel Board case number 2006G012.

Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the issue of retaliation. Ms. Garcia seconded the motion. The motion passed on the

affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Patrick Ward v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2004B143 (February 2, 2006).

The Board declined to take any action on its own motion in this matter.

**VI. REVIEW OF THE MINUTES FROM THE JANUARY 17, 2006 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Mares moved to approve the minutes of the January 17, 2006 meeting as submitted. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Mr. Mares, Ms. Salkind, and Mr. Zakhem.

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 17, 2006 PUBLIC MEETING:**

- A. Perry Venard v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2000B114.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an Order of the Board.

- B. Emmanuel Toks Adeniran v. Department of Revenue, Colorado Lottery, State Personnel Board case number 2005G039.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- C. Pamela Cress v. Department of Human Services, State Personnel Board case number 2005S012.

The Board voted to reject the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- D. Michael M. Kiley v. Department of Health Care Policy and Financing, State Personnel Board case number 2005S007.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

#### **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

There was no report of the State Personnel Director this month.

#### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

##### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to the Board and to Appellate Courts

##### **B. OTHER BOARD BUSINESS**

- Staff Activities

In addition to the drafting of the many decisions in the Agenda, the Director reported that there are three candidates for the Board election: Rich Djokic, former Director of the State Personnel Board; Kathy Newell, formerly of the Department of Law; and Ira Sanders, who is retiring from the Department of Labor and Employment.

Finally, the Board staff is going to be revising the chapter on personnel law CLE Colorado's Employment Law Handbook.

##### **C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

Mr. Zakhem expressed his gratitude to Mary Young and her staff for their hospitality in hosting the February meeting and for expressing interest in the Board. He explained the roles of the Board in adjudication of cases and rulemaking. There were no comments from attorneys, employee organizations, personnel administrators, and the public.

#### **X. PROPOSED LEGISLATION AND/OR RULEMAKING**

Director Rozansky told the Board members that the March 21, 2006 meeting will include a rulemaking hearing.

#### **XI. EXECUTIVE SESSION**

##### **A. Case Status Report**

##### **B. Minutes of the January 17, 2006 Executive Session**

C. Other Business

The meeting adjourned by consensus.

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**APPROVED THIS 21st DAY OF MARCH, 2006.**

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John Zakhem, Chair

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Diedra Garcia, Member

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Donald J. Mares, Member

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Elizabeth Salkind, Member